

Vernard Jerome Sparks,	)	C/A No.: 0:07-430-JFA-BM
	)	
Petitioner,	)	
vs.	)	O R D E R
	)	
Director, Lancaster County	)	
Detention Center,	)	
	)	
Respondent.	)	
	)	

Specifically, petitioner alleges that he was indicted in state court on charges of murder, armed robbery and kidnapping. He then pled guilty to accessory before the fact of armed robbery and the other charges were nolle prossed by the State.

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The Magistrate Judge assigned to this action<sup>1</sup> has prepared a comprehensive Report and Recommendation wherein he suggests that the respondent's motion to dismiss<sup>2</sup> be granted. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The petitioner was advised of his right to file objections to the Report and Recommendation, which was entered on the docket on October 12, 2007. He filed timely objections<sup>3</sup> to the Report.

The Magistrate Judge suggests that as to the first two grounds, the petitioner has not exhausted his state remedies because he has not filed a direct appeal of his state conviction nor has he filed a post-conviction relief application with respect to the state charges. The Magistrate Judge also opines that ground three of his petition (denial of access to legal material) should be dismissed as more properly pursued under 42 U.S.C. § 1983.

In his objections to the Report, the petitioner apologizes for not responding to the Roseboro order and contends he did not exhaust his state remedies because he was forced

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<sup>1</sup> The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

<sup>2</sup> An order was issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4<sup>th</sup> Cir. 1975) notifying petitioner of the summary dismissal procedure and possible consequences if he failed to adequately respond to the motion for summary judgment. Petitioner did not respond to the motion.

<sup>3</sup> Under 28 U.S.C. § 636(b)(1), the district court is obligated to conduct a *de novo* review of every portion of the Magistrate Judge's Report to which objections have been filed. The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4<sup>th</sup> Cir. 2005). *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to timely file specific written objections to the Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4<sup>th</sup> Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4<sup>th</sup> Cir. 1985).

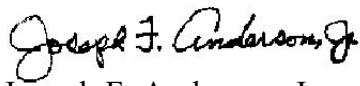
into pleading guilty on his state charge. He does not present any specific objections to the Report. Rather, he requests “papers I needs to send for or fill out and where do I need to mail them concerning . . . my state attorney.”

After carefully reviewing the applicable law, the record in this case, the Report and Recommendation, and the objections thereto, the court finds the Magistrate Judge’s recommendation fairly and accurately summarizes the facts and applies the correct principles of law. The court, therefore, adopts the recommendation of the Magistrate Judge in full and incorporates this Report by specific reference.

Accordingly, the respondent’s motion is granted and this action is dismissed without prejudice.

IT IS SO ORDERED.

January 23, 2008  
Columbia, South Carolina

  
Joseph F. Anderson, Jr.  
United States District Judge